

REMARKS**INTRODUCTION**

Claim 27 has been canceled. Claim 5 has been previously canceled. Claims 1, 3, and 24 have been amended. Claims 1 through 4, 6 through 26, and 28 through 32 remain in the application.

Claims 3 and 6 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In the previous Amendment, claims 3 and 6 were amended and rewritten in independent form to include the limitations of the base claim and any necessary intervening claims. As such, claims 3 and 6 could not be objected to as being in dependent form, but should have been allowed. It is respectfully submitted that claims 3 and 6 are allowable, which allowance is solicited.

Claims 9, 11, 18, 21, and 32 were also objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Counsel for Applicant would like to thank Examiner Bradford for the indication of allowable subject matter in claims 9, 11, 18, 21, and 32. However, Applicant is electing to keep these dependent claims dependent at this time.

Counsel for Applicant would also like to thank Examiner Bradford and Examiner Johnson for the telephone interview on May 5, 2008, regarding the present application. In the telephone interview, Counsel for Applicant pointed out that claims 3 and 6 were previously in independent form and should be indicated as being allowed. Also, claims 1 and 24 were discussed in view of the Lichy '104 patent along with proposed clarifying amendments to these

claims. The Examiners agreed that the proposed amendments would overcome the rejections based on the Lichy '104 patent.

REJECTION OF CLAIMS 1, 4, 10, 12 THROUGH 14, AND 16 UNDER 35 U.S.C. § 102

Claims 1, 4, 10, 12 through 14, and 16 were rejected under 35 U.S.C. § 102(b) as being anticipated by Lichy (U.S. Patent No. 5,482,104). Applicant respectfully traverses this rejection.

U.S. Patent No. 5,482,104 to Lichy discloses a guide system for a vertically moveable flexible door. FIGS. 17 and 18 illustrate an embodiment which includes a guide structure 180 supported by a bracket structure 182 attached to a wall 184. The guide structure 180 includes a guide channel 186 including spaced, generally parallel vertical flanges 188 and 190 which are interconnected at one end by a bight portion 192. The flanges 188 and 190 are spaced apart to receive a flexible door or curtain 196 with the side edge of the curtain 196 received between the flanges 188 and 190. The side edge of the curtain 196 is provided with a strip 198 on the outer surface thereof and a strip 200 on the inner surface thereof which form double windlocks. As illustrated in FIGS. 17 and 18, the strips 198 and 200 are not aligned with each other with the strip 198 on the outer surface being spaced laterally inwardly from the edge of the curtain 196 slightly greater than the width of the strip 200 which is on the inner surface of the curtain 196 and which has its outer edge generally aligned with the side edge of the curtain 196. The outer flange 190 has a longer lateral extent as compared to the inner flange 188 with each of the flanges including an inwardly offset end portion 206 terminating in a partially cylindrical end edge 208 for snap engagement with a windbar 210 in the form of a generally channel shaped member having an internal recess 212 for snap engagement with the edge 208 of the channels 188 and 190. As illustrated, the inner edge of each of the windbars projects inwardly from the flanges

188 and 190 and engage opposite surfaces of the curtain 196 in slightly staggered relation. Thus, the inner edge of the inner flange of each of the windbars is in the path of movement of the windlocks 198 and 200 when the edge of the curtain 196 is moved out of the guide channel with the snap engagement of the windbars 210 enabling the windbars 210 to be pulled off of the flanges 188 and 190 when the curtain is subjected to an excessive force such as an impact from a vehicle or the like. Lichy '104 does not disclose each guide member formed with two wall sections comprising integrally connected, inner and outer, longitudinally extending, resilient wall sections, each wall section having an integral, inwardly projecting, longitudinally extending rib. Lichy '104 also does not disclose pairs of curtain lock members mounted on and distributed along each side edge section of a curtain with each pair of the curtain lock members on its respective side edge section being spaced apart from adjacent pairs on the same side edge section, the lock members of each pair being positioned directly opposite one another on front and rear surfaces of the curtain respectively.

In contradistinction, claim 1, as amended, clarifies the invention claimed as a roll-up type door assembly including a flexible curtain made of rubber, synthetic rubber or fabric material and capable of closing a doorway, the curtain having upper and lower ends, two opposite side edges, a length, and a width. The assembly also includes a curtain winding mechanism having the upper end of the curtain attached thereto for raising the curtain by rolling the curtain up. The assembly includes two straight, extruded flexible guide members which are mounted so as to extend vertically on opposite, vertical sides of the doorway during use of the door assembly, two side edge sections of the curtain each being movable in a respective one of the guide members when the curtain is raised or lowered during use thereof. Each guide member is formed with two wall sections comprising integrally connected, inner and outer, longitudinally extending, resilient wall sections, each wall section having an integral, inwardly projecting, longitudinally

extending rib, the two ribs of each guide member forming an elongate slot which has a width and through which a respective one of the side edge sections can extend during use of the door assembly. Each rib forms a longitudinally extending concave surface which is concave as seen in a transverse cross-section of the respective guide member, the two concave surfaces of the two ribs of each guide member forming an elongate split socket arrangement. The assembly includes pairs of curtain lock members mounted on and distributed along each side edge section of the curtain with each pair of the curtain lock members on its respective side edge section being spaced apart from adjacent pairs on the same side edge section. The lock members of each pair are positioned directly opposite one another on front and rear surfaces of the curtain respectively, a combined thickness of each pair of the lock members and the curtain material exceeding the width of the elongate slot so that the pairs of lock members prevent the side edge sections of the curtain from escaping out of the guide members under normal windload or pressure conditions. The split socket arrangement engages pairs of the lock members located in their respective guide member during use of the door assembly. At least some curtain lock members engage with the ribs of their respective guide members when an excessive windload or impact is put upon the curtain and this engagement causes the wall sections of at least one guide member to separate from each other and thereby release the respective side edge section from the at least one guide member with little if any damage to the curtain or the guide members.

A rejection grounded on anticipation under 35 U.S.C. § 102 is proper only where the subject matter claimed is identically disclosed or described in a reference. In other words, anticipation requires the presence of a single prior art reference which discloses each and every element of the claimed invention arranged as in the claim. In re Arkley, 455 F.2d 586, 172 U.S.P.Q. 524 (C.C.P.A. 1972); Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 U.S.P.Q.

781 (Fed. Cir. 1983); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481 (Fed. Cir. 1984).

Lichy '104 does not disclose or anticipate independent claim 1 as amended and independent claim 12. The Lichy '104 patent merely discloses a door guide system for a flexible door curtain. Lichy '104 lacks each guide member formed with two wall sections comprising integrally connected, inner and outer, longitudinally extending, resilient wall sections with each wall section having an integral, inwardly projecting, longitudinally extending rib. Lichy '104 also lacks pairs of curtain lock members mounted on and distributed along each side edge section of a curtain with each pair of the curtain lock members on its respective side edge section being spaced apart from adjacent pairs on the same side edge section, the lock members of each pair being positioned directly opposite one another on front and rear surfaces of the curtain respectively. In the Lichy '104 patent, in Figures 17 and 18, the guide channel 186 has spaced-apart, parallel vertical flanges or wall sections 188, 190, the side edge of the curtain provided with two strips 198, 200 located on opposite sides of the curtain with one strip 200 located immediately adjacent the edge of the curtain and the other strip 198 spaced laterally inwardly on the curtain edge section, and each flange terminating in a partially cylindrical end edge or bead for snap engagement with a windbar 210 which can be pulled off of the flanges when the curtain is subjected to excessive force.

With respect to claim 1, the limitation "integral" has been added to describe the longitudinal extending rib formed on each wall section which further distinguishes over the guide member structure of Lichy '104 wherein, instead of integral ribs, the guide member has the separable windbars 210. The separable windbars 210 of Lichy '104 which form the elongate slot are important to the functioning of the Lichy guide member as, in order for the curtain edge section to release under an excessive windload or impact, the windbars 210 must be able to

detach. This is not the case with the Applicant's roll-up type door assembly which relies upon the flexibility of the wall sections to separate from each other under excessive windload or impact.

Claim 1 has been amended to further clarify that the each pair of curtain lock members on each side edge section be spaced apart from adjacent pairs on the same side edge section. In the Lichy '104 construction, it is important to note that there is only one pair of curtain lock members on each side edge section of the curtain, these being the elongate strips 198, 200 that extend substantially the height of the curtain edge. This is evidenced by Figure 18 and the description found in column 8, beginning at line 19. It is noted therein that the staggered relationship of the windlocks 198, 200 is important as it provides an interlocking effect on the end portion of the convolutions when it is wound onto the door drum, this relationship helping to maintain the end edges of the wound curtain in radial alignment. The interlocking effect provides for proper orientation of the curtain as it is wound onto the drum or unwound.

Additionally, claim 1 has been amended to clarify that the lock members in a pair are directly opposite each other to further describe the positional relationship of the lock members of each pair. In Lichy '104, the strips 198, 200 are not directly opposite one another, but staggered, and they cannot be directly opposite one another in order for the Lichy door assembly to work as intended.

From the above review, it will be seen that claim 1 distinguishes over the teachings of Lichy '104 by reciting the following features:

- (1) Each guide member formed with two wall sections comprising integrally connected, inner and outer, longitudinally extending, resilient wall sections, each wall section having an integral, inwardly projecting, longitudinally extending rib (In the reference, windbars 210 are separate from the flanges 188, 190 and detach themselves from the flanges);

(2) Pairs of curtain lock members mounted on and distributed along each side edge section of a curtain with each pair of the curtain lock members on its respective side edge section being spaced apart from adjacent pairs on the same side edge section (In the reference, there is only a single pair of elongate curtain lock members 198, 200 extending along each side edge section);

(3) The lock members of each pair being positioned directly opposite one another on front and rear surfaces of the curtain respectively (In the reference, the elongate locking strips 198, 200 are staggered in the lateral direction relative to one another and this is an important requirement for these elongate locking strips as indicated).

In view of these numerous differences and the significance of these differences, it is respectfully submitted that claim 1 is not anticipated by the Lichy '104 patent and is now in condition for allowance along with the claims dependent thereon. Therefore, it is respectfully submitted that claim 1 along with dependent claims 4 and 10 are allowable over the rejection under 35 U.S.C. § 102(b).

With respect to the rejection of independent claim 12 directed to an elongate guide, it is respectfully submitted that claim 12 distinguishes over the teachings of Lichy '104 by requiring that each of the longitudinally extending ribs "has an elongate interior surface which is concave as seen in said transverse cross-section" and by the requirement that these concave surfaces "form an elongate, split curved socket for engaging the curtain lock mechanism when the lock mechanism is located in the guide during use".

As indicated above, the only concave surfaces in the door guide structure shown in Figure 17, for example, are the inner concave surfaces of the two windbars 210. In fact, the only feature in the Lichy '104 structure which could be considered similar to the integral longitudinal ribs required by claim 12 are the flange end portions 206 but, even if these are considered ribs,

they only have convex cylindrical surfaces formed by their end edges 208. Clearly, the two cylindrical end edges 208 do not form a socket for engaging the curtain lock mechanism of Lichy '104, namely the elongate edge strips 198, 200. Moreover, the concave surfaces on Applicant's ribs provides an important advantage and is illustrated in Figures 10, 14 and 18 of the drawings. The feature of the concave surfaces 146 is described in paragraph 51 of the present description. As explained in paragraph 60 the curtain locks 100 tend to be drawn into the split socket receptacle of the guide members and, because of the exterior curvature of the lock members and the concave interior surfaces 94 (see Figure 4), the lock members can pivot in a "balljoint" fashion to accommodate dynamic fluctuations and the changes in the position of the curtain.

For the aforementioned reasons, it is respectfully submitted that claim 12 is in condition for allowance along with dependent claims 13, 14, and 16. Therefore, it is respectfully submitted that claim 12 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 102(b).

REJECTION OF CLAIMS 2, 7, AND 15 UNDER 35 U.S.C. § 103

Claims 2, 7, and 15 were rejected under 35 U.S.C. § 103 as being unpatentable over Lichy '104. Applicant respectfully traverses this rejection.

As to patentability, 35 U.S.C. § 103 provides that a patent may not be obtained:

If the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Id.

The United States Supreme Court interpreted the standard for 35 U.S.C. § 103 in Graham v. John Deere, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). In Graham, the Court stated that under 35 U.S.C. § 103:

The scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined. 148 U.S.P.Q. at 467.

It is respectfully submitted that the subject matter of dependent claim 2 would not be obvious in light of the teachings of Lichy '104 and ordinary skill in the art. Indeed it is submitted that in order to function as intended, the Lichy '104 structure requires that the elongate locking strips 198, 200 have edges which are substantially perpendicular relative to the main outer surface of these members, this arrangement being necessary for these locking strips to hold the curtain edge section in the guide member. The windbars 210 must also have flat inner surfaces which extend perpendicular to the main surfaces of flanges 188, 190 in order to be able to retain the strips 198, 200 in the guide member. This form of flat surface to flat surface engagement is possible in Lichy '104 because of the detachable nature of the windbars 210, a feature not employed in Applicant's guide members. The Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claims 2 and 7 are allowable over the rejection under 35 U.S.C. § 103.

With respect to the rejection of dependent claim 15, it is submitted that this claim is allowable over the Lichy patent for the same reasons as stated for claim 12 on which it depends indirectly. The Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claim 15 is allowable over the rejection under 35 U.S.C. § 103.

REJECTION OF CLAIMS 8 AND 24 THROUGH 31 UNDER 35 U.S.C. § 103

Turning now to the rejection of claims 8 and 24 through 31 on grounds of obviousness in view of the teachings of the Lichy '104 patent and U.S. Patent No. 5,747,738 to

Indoe, reconsideration of this objection is respectfully requested in view of the following comments and the amendments which have been made to claims 1 and 24.

It is respectfully submitted that the Indoe '738 patent is not relevant to either the door assembly of claim 8 or the door curtain of claim 24. The Indoe '738 patent is directed to a method of applying non self-adhesive wall covering to smooth objects such as cover plates and this patent is not related to the flexible door art in any way. The structure taught in this reference is a double-sided contact adhesive sheet 1 having two adhesive layers at 2 and 4 on each of the sides of the sheet with these adhesive layers being covered by release sheets 7 and 9, each of which has at least one pre-perforated section. The release sheets 7 and 9 can be made of a variety of materials including polyvinylchloride and polyethylene but these release sheets serve an entirely different purpose than the strips of low friction, wear resistant material required in the door assembly of claim 8. Indeed the sole purpose of the release sheets in the cited reference is to cover the adhesive layer so that it will not come into contact with an object or adjacent surface until the adhesive sheet is ready to be used and attached to an object. The selection of the particular material for the release sheet is solely dependent on its ability to be removed readily from the adhesive layer when this is required. One skilled in the art of the present invention would have no reason to believe that the release sheets used in this particular patent would be suitable for use on a door curtain in order to provide a wear resistant surface where the curtain engages the door guide.

In addition, the cited reference in no way teaches the particular wear resistant material recited in claim 8. Accordingly, allowance of claim 8 is believed to be clearly in order. Similar comments apply equally to independent claim 24 and the claims dependent thereon. As admitted by the Examiner, the Lichy '104 reference fails to disclose the use of strips of low friction, wear resistant material affixed to at least one surface of the opposite edges of the curtain

and for the reasons already indicated in connection with claim 8, the Indoe '738 reference fails to overcome this deficiency in the teachings of Lichy '104.

As to claim 24, claim 24, as amended, clarifies the invention claimed as a door curtain for use in a roll-up door apparatus. The curtain includes a flexible curtain made of rubber, synthetic rubber or fabric and capable of closing a doorway, the curtain having front and rear surfaces, upper and lower ends, and two opposite side edges. The curtain also includes strips of low friction, wear-resistant material affixed to at least one of the front and rear surfaces adjacent the opposite side edges, the wear resistant material selected from the group consisting of aliphatic polyetherurethane in dichlormethane (OPD) and polyethylene terephthalate (PET) polyester with a polyvinylchloride backing. The curtain further includes a plurality of curtain lock members mounted on and distributed along the strips of wear-resistant material, the lock members being arranged in pairs with the lock members of each pair being positioned opposite one another on the front and rear surfaces of the curtain respectively and spaced apart from adjacent pairs distributed along the same strip.

There is nothing in either cited reference which would lead one skilled in the construction of flexible doors to combine these two references to obtain the wear-resistant advantages that are obtained by the door curtain structure recited in claim 24. In this regard, it should be noted that the wear-resistant strips required by claim 24 are not provided to guard the door against harsh weather. If this were the case, then it would make sense to apply the claimed wear-resistant material to the entire surface of the door curtain which is not done by the Applicant and is in no way suggested by the present application. The purpose of the wear-resistant strips on the side edges of the curtain is to prevent excessive wear on the curtain as it moves up and down in the two guide members.

In addition regarding claim 24, the references, if combinable, fail to render obvious a plurality of curtain lock members mounted on and distributed along strips of wear-resistant material, the lock members being arranged in pairs with the lock members of each pair being positioned opposite one another on the front and rear surfaces of the curtain respectively and spaced apart from adjacent pairs distributed along the same strip. It is now quite clear that the elongate windlocks or strips 198, 200 on each edge section of the door curtain of Lichy '104 do not satisfy this requirement of claim 24. The Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claim 8 and 24 along with dependent claims 25 through 31 are allowable over the rejection under 35 U.S.C. § 103.

REJECTION OF CLAIMS 17, 20, 22, AND 23 THROUGH 31 UNDER 35 U.S.C. § 103

Claims 17, 20, 22, and 23 were rejected under 35 U.S.C. § 103 as being unpatentable over Lichy '104 and further in view of Indoe '738. As to claims 17, 20, 22, and 23, Applicant respectfully traverses this rejection for the same reasons given above to claims 8 and 12. It is respectfully submitted that claims 17, 20, 22, and 23 are allowable over the rejection under 35 U.S.C. § 103.

Obviousness under § 103 is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. Since the Examiner has not provided a sufficient factual basis, which is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejections of claims 2, 7, 8, 15, 17, 20, and 22 through 31 are improper. Therefore, it is respectfully submitted that claims 2, 7, 8, 15, 17, 20, and 22 through 31 are allowable over the rejections under 35 U.S.C. § 103.

Based on the above, it is respectfully submitted that the claims are in a condition for allowance, which allowance is solicited.

Respectfully submitted,

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